

CHAPTER NO. 735

SENATE BILL NO. 2300

By McNally

Substituted for: House Bill No. 2572

By Hackworth

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 5, relative to child support income assignment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-5-501, is amended by deleting the fifth sentence of subsection (g) in its entirety; by designating the remaining language of subsection (g) as subdivision (1); and by adding the following language as a new subdivision to be designated as indicated:

(2) The employer, person, corporation or institution shall provide notice to the clerk, the department, or the entity in the other state to which the withheld income was to be sent, and the division of employment security of the Department of Labor and Workforce Development, of termination of employment or income payments to the employee. Any employer, person, corporation or institution that files for bankruptcy or ceases to operate as a business shall provide notice to the clerk or the department of the bankruptcy or cessation of business upon filing bankruptcy or at least ten (10) days prior to ceasing to operate as a business. Any notice provided pursuant to this subsection shall include the names of all the affected employees subject to an income assignment, the last known address of each of those employees, and the name and address of the new employer or source of income of each of those employees, if known.

SECTION 2. Tennessee Code Annotated, Section 36-5-501, is amended by deleting the third sentence of subsection (i) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 36-5-501, is amended by adding the following as two new subsections to be designated as indicated:

(p) If any employer, person, corporation or institution fails or refuses to comply with the requirements of this section, then that employer, person, corporation or institution is liable for any amounts up to the accumulated amount which should have been withheld. In addition, that employer, person, corporation or institution may be subject to a civil penalty to be assessed and distributed pursuant to the requirements of this subsection.

(1) Upon the first failure to comply with an order of income assignment, that employer, person, corporation or institution may be subject to a civil penalty of one hundred dollars (\$100) per obligor for whom an order of income assignment was received, two hundred dollars (\$200) per obligor for the second failure to comply and five hundred dollars (\$500) per obligor for each occurrence thereafter.

(2) The civil penalty, when assessed and collected by the Department of Human Services, shall be pro-rated among the children for whom the income assignment order was issued and with which the employer, person, corporation or institution failed to comply. If there are multiple income assignments for an obligor, the pro-rated amounts of the civil penalty shall be distributed to the children in the proportion that each order for which the income assignment was issued is to the total amount of all income assignments with which the employer, person, corporation or institution failed to comply.

(3) The civil penalty amount received by the children shall not reduce in any manner the amount of support owed by the obligor parent, but shall be received in addition to all ordered child support.

(q)(1) Penalties authorized by this section shall be assessed by the Commissioner of Human Services after written notice to the employer, person, corporation or institution. The notice shall provide fifteen (15) days from the mailing date of the notice for the employer, person, corporation or institution to file a written request to the department for appeal of the civil penalty. If an appeal is timely filed with the department, the department shall set an administrative hearing on the issue of the assessment pursuant to the provisions of the Administrative Procedures Act, compiled In Title 4, Chapter 5, relative to contested case hearings. Failure to timely appeal the assessment of the civil penalty shall be final and conclusive of the correctness of the assessment.

(2) Any amount found owing shall be due and payable not later than fifteen (15) days after the mailing date of the determination. Failure to pay an assessment shall result in a lien against the real or personal property of the employer, person, corporation or institution in favor of the department. If an assessment is not paid when it becomes final, the department may collect the amount of the civil penalty by any available administrative enforcement procedures or by court action. The non-prevailing party shall be liable for all court costs and litigation taxes of the proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D or contractor staff utilized in litigating the assessment.

(3) Any appeal of the action of the commissioner pursuant to this section shall be made in conformity with § 36-5-1003.

SECTION 4. This act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 10, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of May 2004


PHIL BREDESEN, GOVERNOR